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Arizona Corporation Commission
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EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION 29 May 1998

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TO: Parties to the Electric Deregulation Docket
FROM: Commissioner Renz D. Jennings
DATE: May 26, 1998
SUBJECT: Stranded Cost Issues; Docket No. RE-00000C-94-165



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Commissioner Kunasek and his assistant, Jerry Porter, have charged that Commissioner Irvin and I have violated the Open Meeting law. While I know of no instance related to the restructuring, stranded-cost docket where Commissioner Irvin violated the Open Meeting law, I know that I have not.

The Open Meeting law requires that commissioners not discuss among themselves contested matters on which they could be taking final action. Stated differently, Commissioners cannot talk to each other on substantive matters outside of a formally-noticed Open Meeting. I can categorically say that I have had no such meetings with Commissioner Irvin or Commissioner Kunasek. Because the stranded-cost docket matters are subject to the ex parte-communication rule, all commissioners are bound not to discuss stranded-cost issues with any of the parties, including staff. And, I did not.

With respect to other matters related to the rule on restructuring, all commissioners are permitted (and I believe the commissioners should talk to the various parties with respect to issues related to the changes to the restructuring rule) to discuss this matter with all parties, the public, but not each other (that would violate the Open Meeting law, and, of course, as already previously noted, discussions regarding stranded costs are also off limits.) Notwithstanding the allegations and insinuations, I have done precisely what I know Commissioner Kunasek has done, to wit: I have met with staff regarding proposed changes to the rules and staff positions. The staff has scrupulously avoided discussions about stranded cost in the more general discussions about the restructuring rule changes.

I have met with staff and with Commissioner Kunasek and Commissioner Irvin in Open Meeting to discuss the position the Commission was taking regarding legislation affecting the Salt River Project. The Commission was attempting to ensure that whatever the Legislature did related to the Project that it would be consistent with what the Commission was doing. Indeed, after all three commissioners met in an Open Meeting to discuss legislation, all three commissioners signed a letter to the Legislature outlining the position that the Commission wanted it to take. When Commissioner Kunasek was on vacation, Commissioner Irvin and I sent our own letters to legislators as well. Subsequently, members of staff and Executive Secretary Jack Rose met with various parties to discuss the Salt River Project legislation and its interactions with the Commission

rules. Those discussions also touched upon stranded-cost issues as they relate to both the Project and other participants. While I encouraged Mr. Rose to discuss and negotiate with various parties on how the Commission and the Legislature might harmonize and come to settlement of a number of issues, I did not and, to this day, do not know what the staff negotiating position is with respect to stranded cost as it relates to utilities that the Commission regulates. (Since the Project is not a party, ex parte is not an issue.) I knew, as did the other commissioners, the staff position in the stranded-cost docket and assumed that that would constitute the basis for their position in any settlement discussions.

With respect to the statements attributed to Mr. Rose that he had two votes for a negotiating position, there is a simple answer. At least two commissioners encouraged staff and Mr. Rose to discuss with the Legislature and other interested parties a resolution that would lead to a settlement and would harmonize the Legislative and Commission approaches to restructuring. In short, save one overstatement that there were two votes for a particular settlement, the staff and the Executive Secretary have operated within the spirit and letter of the Open Meeting and ex parte rules. So have I. Indeed, when one of the major parties called me to find out if I had signed off on a major settlement, claiming that the Executive Secretary had said there were two votes for it, I told him that no votes had been taken, that I didn't know the specifics of the staff proposed settlement, and that I reserved my judgement until I saw and studied any settlement proposal.

I have been pretty outspoken on the issue of divestiture prior, during and after the stranded-cost hearing. I believe Commissioners Irvin and Kunasek have also been vocal on this issue as well. I believe there is some value in commissioners staking out positions in public. I look forward to Commissioner Kunasek's plan and assume that it is not the result of any ex parte discussion. While I support all who would vindicate the Open Meeting law and the ex parte rule, I believe Commissioner Kunasek and Mr. Porter are spending too much time insinuating and not enough time trying to make anything work.